

OWENSBY, et al. vs. City of Cincinnati, et al.
October 21, 2003

1

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

ESTATE OF ROGER D. :
OWENSBY JR., et al., :
 :
Plaintiffs, :
vs. : Case No. 01-CV-769
 : (Judge S. A. Spiegel)
CITY OF CINCINNATI, :
et al., :
 :
Defendants. :

Videotaped deposition of DARREN VERESE
SELLERS, witness herein, called by the plaintiffs
for cross-examination, pursuant to the Federal Rules
of Civil Procedure, taken before me, Wendy Davies
Welsh, a Registered Diplomate Reporter and Notary
Public in and for the State of Ohio, at the offices
of Helmer, Martins & Morgan Co. LPA, 1900 Fourth &
Walnut Centre, 105 East Fourth Street, Cincinnati,
Ohio, on Tuesday, October 21, 2003, at 10:09 a.m.

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DARREN VERESE SELLERS

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<p>1 APPEARANCES:</p> <p>2 On behalf of the Plaintiffs:</p> <p>3 Paul B. Martins, Esq. 4 Don Stiens, Esq. 5 Helmer, Martins & Morgan Co. LPA 6 Suite 1900, Fourth & Walnut Centre 7 105 East Fourth Street 8 Cincinnati, Ohio 45202 9 Phone: (513) 421-2400</p> <p>10 John J. Helbling, Esq. 11 The Helbling Law Firm, L.L.C. 12 3672 Springdale Road 13 Cincinnati, Ohio 45251 14 Phone: (513) 923-9740</p> <p>15 On behalf of the Defendants City of Golf Manor, 16 Stephen Tilley, Roby Heiland and Chris 17 Campbell:</p> <p>18 Lynne Marie Longtin, Esq. 19 Rendigs, Fry, Kiely & Dennis 20 900 Fourth & Vine Tower 21 One West Fourth Street 22 Cincinnati, Ohio 45202-3688 23 Phone: (513) 381-9200</p> <p>24 On behalf of Defendants City of Cincinnati, Darren Sellers, Jason Hodge:</p> <p>25 Geri Hernandez Geiler, Esq. 26 Assistant City Solicitor 27 and 28 Julie F. Bissinger, Esq. 29 Chief Counsel 30 Department of Law 31 Room 214, City Hall 32 801 Plum Street 33 Cincinnati, Ohio 45202 34 Phone: (513) 352-3346</p>	<p>1 S T I P U L A T I O N S</p> <p>2 It is stipulated by and among counsel for the</p> <p>3 respective parties that the deposition of DARREN</p> <p>4 VERESE SELLERS, witness herein, called by the</p> <p>5 plaintiffs for cross-examination, pursuant to the</p> <p>6 Federal Rules of Civil Procedure, may be taken at</p> <p>7 this time by the notary; that said deposition may be</p> <p>8 reduced to writing in stenotype by the notary, whose</p> <p>9 notes may then be transcribed out of the presence of</p> <p>10 the witness; and that proof of the official</p> <p>11 character and qualifications of the notary is</p> <p>12 expressly waived.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
Page 3	Page 5
<p>1 APPEARANCES (Continued):</p> <p>2 On behalf of the Defendants Robert B. Jorg, 3 Patrick Caton, Jason Hodge, Victor Spellman and 4 Darren Sellers:</p> <p>5 Donald E. Hardin, Esq. 6 Hardin, Lefton, Lazarus & Marks, LLC 7 915 Cincinnati Club Building 8 30 Garfield Place 9 Cincinnati, Ohio 45202 10 Phone: (513) 721-7300</p> <p>11 Also present:</p> <p>12 Richard W. Grubb, Videographer</p> <p>13 Lisa Damstrom, Law Clerk 14 Helmer, Martins & Morgan Co., L.P.A.</p> <p>15 Mr. Roger Owensby</p> <p>16 Mrs. Brenda Owensby</p> <p>17 Mr. Shawn Owensby</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 I N D E X</p> <p>2 Examination by: Page</p> <p>3 Mr. Martins 6</p> <p>4 Ms. Longtin 78</p> <p>5 Mr. Martins 80</p> <p>6 - - -</p> <p>7 E X H I B I T S</p> <p>8 Deposition Exhibit 37 12</p> <p>9 Deposition Exhibit 38 23</p> <p>10 Deposition Exhibit 39 27</p> <p>11 Deposition Exhibits 40, 41 & 42 41</p> <p>12 Deposition Exhibit 43 44</p> <p>13 Deposition Exhibit 44 70</p> <p>14 Deposition Exhibit 45 73</p> <p>15 Deposition Exhibit 46 74</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

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<p style="text-align: right;">Page 30</p> <p>1 A. Uh-huh.</p> <p>2 Q. All right. While you were at the scene</p> <p>3 did you make any -- well, did you have a cell phone?</p> <p>4 A. No.</p> <p>5 Q. Do you know if Officer Hassc had a cell</p> <p>6 phone?</p> <p>7 A. Don't know.</p> <p>8 Q. Do you recall seeing any officers making</p> <p>9 calls on cell phones?</p> <p>10 A. I don't recall seeing anybody making any</p> <p>11 calls.</p> <p>12 Q. While you were at the scene do you recall</p> <p>13 whether or not any lawyers showed up on the scene?</p> <p>14 A. I wouldn't know if they were lawyers</p> <p>15 unless they told me, sir.</p> <p>16 Q. I take it one of the things that -- one of</p> <p>17 the first things officers would do on a scene such</p> <p>18 as this would be to secure the perimeter?</p> <p>19 A. Usually.</p> <p>20 Q. Put up tape?</p> <p>21 A. Usually.</p> <p>22 Q. Was that done here?</p> <p>23 A. It was tape put up. I was -- had my hand</p> <p>24 in putting up that tape also.</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. Well, we're to the point where they</p> <p>2 arrive.</p> <p>3 A. Right.</p> <p>4 Q. What happens next?</p> <p>5 A. They both get out. Like I said, I never</p> <p>6 really -- I didn't know who they were. My -- Hasse,</p> <p>7 he told me what their names were and everything,</p> <p>8 so...</p> <p>9 Q. When you say they both get out, that would</p> <p>10 be Jorg and Caton?</p> <p>11 A. Jorg and Caton. And then Hunter arrives.</p> <p>12 Q. Okay.</p> <p>13 A. And they're outside, and they're telling</p> <p>14 me about some guy named LA, which I have no</p> <p>15 recollection who he is or anything like that, but...</p> <p>16 Q. Who was telling you about LA or --</p> <p>17 A. It was Jorg who started the conversation.</p> <p>18 Q. And do you recall what he said?</p> <p>19 A. First thing he said was that, "We're</p> <p>20 looking for a guy named LA." I said, "Okay. What</p> <p>21 for?" Well, they didn't really tell me what they</p> <p>22 were actually looking for him for. It was in -- in</p> <p>23 relation to an investigation for something.</p> <p>24 After that --</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. And so once the tape is up, I take it no</p> <p>2 one --</p> <p>3 A. The scene is closed.</p> <p>4 Q. -- no civilian should be allowed to cross</p> <p>5 the tape?</p> <p>6 A. No, they shouldn't.</p> <p>7 Q. And in this case was that policy followed?</p> <p>8 A. As far as I know it was.</p> <p>9 Q. I want to now direct your attention back</p> <p>10 to November 7th of 2000. If you look at Exhibit --</p> <p>11 the sketch -- and I think that's 37.</p> <p>12 A. Yes, sir.</p> <p>13 Q. All right. We had talked through the</p> <p>14 position of the cars that Officer Hunter, Officer</p> <p>15 Jorg and Caton had responded with the NTA books or</p> <p>16 in response to the NTA request.</p> <p>17 A. Uh-huh.</p> <p>18 Q. Would you, to the best of your</p> <p>19 recollection now, recall what else happened while</p> <p>20 the three cars were seated at that -- at that area</p> <p>21 behind or in the drive-through area of the Sam's</p> <p>22 Carry Out.</p> <p>23 A. Like what, sir? Be -- can you be more</p> <p>24 specific?</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. Let me stop you before you go on. Where</p> <p>2 were you and where was Officer Jorg when he was</p> <p>3 telling you this?</p> <p>4 A. Okay. My back is turned -- my car is here</p> <p>5 (indicating). So my back is actually to my car,</p> <p>6 okay. So I'm looking --</p> <p>7 Q. Across --</p> <p>8 A. -- towards the -- towards the Sunoco,</p> <p>9 okay. I'm in that direction looking towards the</p> <p>10 Sunoco. Okay?</p> <p>11 Q. So you're standing out by the, what, the</p> <p>12 front driver's portion of the car?</p> <p>13 A. I'm at the front of --</p> <p>14 Q. Of your car?</p> <p>15 A. -- my car. Right. I'm at the front of my</p> <p>16 car.</p> <p>17 Q. And you're looking down Seymour Avenue?</p> <p>18 A. I'm -- right.</p> <p>19 Q. Toward --</p> <p>20 A. -- Langdon Farm.</p> <p>21 Q. And --</p> <p>22 A. That's Langdon Farm right there.</p> <p>23 Q. And the Cincinnati Gardens?</p> <p>24 A. Right. Right.</p>

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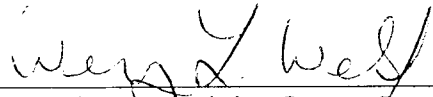
<p style="text-align: right;">Page 34</p> <p>1 Q. Okay.</p> <p>2 A. Right. Jorg is -- has his back towards</p> <p>3 the street. So I guess that's Seymour.</p> <p>4 Q. Yes.</p> <p>5 A. His back is towards the street here. All</p> <p>6 right?</p> <p>7 Q. Okay.</p> <p>8 A. Hunter and Caton were both in this area</p> <p>9 here. I don't know how they were turned or</p> <p>10 anything, but my attention was brought to him,</p> <p>11 because he's the one nearest me --</p> <p>12 Q. Talking to you?</p> <p>13 A. -- and he's the one doing all the talking.</p> <p>14 Like I said, he started telling me about some guy</p> <p>15 named LA, they were looking for him. And I kind of</p> <p>16 like blew that off, because I don't know anybody</p> <p>17 over there. I don't know who you're talking about,</p> <p>18 so it's not a big concern to me.</p> <p>19 That's when -- after they began talking</p> <p>20 and saying -- after Jorg began talking and saying</p> <p>21 stuff like -- all that stuff and everything, that's</p> <p>22 when Hunter said to the effect, well, I think that's</p> <p>23 him. That's him right there.</p> <p>24 Q. Now, where was Hunter when he said that?</p>	<p style="text-align: right;">Page 36</p> <p>1 A. He was on the other side of the street.</p> <p>2 Q. Was it -- was it light or dark or --</p> <p>3 A. It was --</p> <p>4 Q. -- or twilight?</p> <p>5 A. It was kind of -- it was kind of dark out</p> <p>6 there. We had some -- it was a light in that</p> <p>7 parking lot right there, right where we were</p> <p>8 standing at. That's why I couldn't really -- I</p> <p>9 couldn't make out what he even had on or anything or</p> <p>10 if it was a he or a she. I just -- could see a body</p> <p>11 or a person walking down the street.</p> <p>12 Q. Okay. Please continue.</p> <p>13 A. And that's when Hunter said, well "That's</p> <p>14 him. Is that -- I think that's him. I think that's</p> <p>15 him." And one of -- one of them said, "You sure?"</p> <p>16 He's like, "I think so." So we began talking some</p> <p>17 more. And then that's when Jorg said, "Well, we're</p> <p>18 going to go over here and investigate and see who</p> <p>19 this guy is."</p> <p>20 Jorg, Caton, and Hunter, all three, walked</p> <p>21 down Seymour towards the Sunoco. I went and got</p> <p>22 back in the car with my partner. And the prisoner</p> <p>23 we had in there, he wanted to tell where he had</p> <p>24 gotten the marijuana from. That's why we had the</p>
<p style="text-align: right;">Page 35</p> <p>1 A. Hunter was, like I said, he was in this</p> <p>2 area over here. I don't know where -- which way he</p> <p>3 was turned, but he was over in this area over here.</p> <p>4 So then he said, "That's him right there." And I'm</p> <p>5 like, okay. You know, it still --</p> <p>6 Q. Right.</p> <p>7 A. I mean, to me it -- it wasn't a big thing</p> <p>8 to me at the time. I had to deal with what I had to</p> <p>9 deal with right then and there. That's when Jorg</p> <p>10 came out and said, "Well, he's got a lot of balls to</p> <p>11 come out here and all these police officers and all</p> <p>12 these cruisers out here."</p> <p>13 Q. Did -- did you look over to whoever they</p> <p>14 were referring to?</p> <p>15 A. Well, as he was talking I could see like a</p> <p>16 silhouette of a person. And you know, that's just</p> <p>17 out of my peripheral vision.</p> <p>18 Q. Wh--</p> <p>19 A. Big deal.</p> <p>20 Q. Where was the person?</p> <p>21 A. The person I seen was walking down</p> <p>22 Seymour, and he was about to cross the street coming</p> <p>23 towards the Sunoco.</p> <p>24 Q. So he was on the other side of the street?</p>	<p style="text-align: right;">Page 37</p> <p>1 under-- the plainclothes car come up there. And</p> <p>2 they met us -- they -- they were at -- on station</p> <p>3 at, I guess it was --</p> <p>4 Q. Roselawn?</p> <p>5 A. -- Roselawn Park. They were sitting there</p> <p>6 waiting on us. Well, then the -- in between that</p> <p>7 time, that's when the radio, we heard a whole bunch</p> <p>8 of like -- it wasn't screaming, but it was a lot of</p> <p>9 static and a lot -- you could hear a person on there</p> <p>10 like they were struggling or something, on the</p> <p>11 radio. And that's when the officer needs assistance</p> <p>12 came out. I turned and looked at Hasse. Hasse</p> <p>13 said, "That's them, go get them, go help them." So</p> <p>14 I -- I sprinted from over here all the way down</p> <p>15 towards the Sunoco to where I seen those -- those</p> <p>16 guys at.</p> <p>17 Q. Can you draw an arrow indicating the path</p> <p>18 that you took from your car to the area where you</p> <p>19 saw everyone.</p> <p>20 A. Okay.</p> <p>21 Q. Okay. Thank you.</p> <p>22 A. Uh-huh.</p> <p>23 Q. Let me ask you a few things. Had -- do</p> <p>24 you know whether or not Officer Caton talked to your</p>

AFFIDAVIT

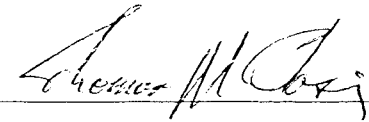
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STATE OF OHIO :
: SS
COUNTY OF HAMILTON :

I, Wendy L. Welsh, Notary Public in and for the State of Ohio, do hereby state that the transcript of the deposition of DARREN VERESE SELLERS, deponent herein, having been submitted to said deponent for review and signature, has not been signed within the thirty (30) day period allowed under the Federal Rules; said deposition to now have the same force and effect as though signed.


Wendy L. Welsh, Court Reporter

Sworn to before me this 8th day of DECEMBER, 2003.



Thomas M. Blasing
Notary Public - State of Ohio

My commission expires:
May 4, 2004.